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June 8, 2015

Via ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Ex Parte* Filing, CG Docket No. 02-278

Dear Ms. Dortch:

The *ex parte* letter filed on June 1, 2015 by the National Consumer Law Center (NCLC) and the National Association of Consumer Advocates (NACA) misunderstands or misstates American Bankers Association’s petition for exemption under section 227(b)(2)(C) of the Communications Act (Petition).¹

NCLC’s and NACA’s central claim with respect to ABA’s Petition—that the Petition seeks permission for financial institutions to make “as many as nine robo dialed calls . . . to alert

¹ Letter from Margot Saunders, Counsel for the National Consumer Law Center, and Ellen Taverna, Counsel for the National Association of Consumer Advocates, to Marlene H. Dortch, Secretary, Federal Communications Commission in CG Docket No. 02-278 at 2 (June 1, 2015) (NCLC Letter); Petition for Exemption of the American Bankers Association in CG Docket No. 02-278 (Oct. 14, 2014) (Petition).

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a consumer of a data breach or suspected fraud”²—misstates the Petition, which seeks permission for financial institutions to make only *one* contact with a consumer to provide a fraud alert, data breach notification or remediation information. *Only* if the consumer fails to respond to the initial call or text does the financial institution need to send additional messages to ensure that the consumer received the notification.³

Moreover, as explained in the Petition, a single message is not always sufficient to serve the purpose for which an organization might need to contact a consumer. Some of the information that will be conveyed to consumers pursuant to the exemption will require more than one automated voice call or text message. For example, if the initial message was a fraud alert concerning a suspicious transaction request, an additional message would need to be sent to advise the consumer that the transaction was approved or, alternatively, that the transaction was disallowed and to explain further steps he or she should take.⁴ If the initial message was a data breach notification or remediation communication, the financial institution might need to send an additional message, for example, to explain how the consumer can obtain a replacement payment card.⁵ However, under no circumstances would eight additional messages need to be sent after the consumer responded to the initial message.

² NCLC Letter at 2.

³ Petition at 19. ABA has requested that the exemption for fraud-related and breach-related communications should permit three such messages to be sent for a maximum of three days, if the customer fails to respond. The limit of three messages per day for three days would be permitted for each affected account and for each affected borrower or co-borrower. *Id.*

⁴ Petition at 20.

⁵ *Id.*

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Once ABA’s proposed exemptions are properly understood, NCLC’s and NACA’s proposal—that the financial institution “provide an opt-in system that allows the called party to *choose* to receive *more* reminder or alert calls”⁶—is wholly unnecessary. If the consumer responds to the message, then the financial institution has no need to send additional notification messages. Moreover, ABA has already agreed to accept and implement a requirement that financial institutions offer and honor recipients’ requests not to receive future automated messages in all four categories identified in ABA’s petition.⁷

In sum, the exemptions requested in ABA’s petition are designed to allow a financial institution to provide *one* notification of potential fraud, a data breach, remediation measures, or a money transfer, in instances where the consumer responds to that notification. When the consumer does not respond to the initial notification message, a limited number of additional notification attempts would be made to ensure the consumer receives this critical and time-sensitive information. Once the consumer responds to a breach-related or fraud-related notice, an additional message or messages may be necessary to complete the consumer protection process.

As ABA pointed out in its *ex parte* letter of May 22, 2015, the differences between NCLC/NACA and the ABA, concerning ABA’s Petition, have largely been resolved.⁸ The objections and proposals raised in the latest NCLC Letter are based upon a misconception

⁶ NCLC Letter at 2 (*emphasis in original*).

⁷ Letter from Charles H. Kennedy, Counsel for American Bankers Association, to Marlene H. Dortch, Secretary, Federal Communications Commission in CG Docket No. 02-278 at 3 (Feb. 5, 2015).

⁸ Letter from Charles H. Kennedy, Counsel for American Bankers Association, to Marlene Dortch, Secretary, Federal Communications Commission, in CG Docket No. 02-278 (May 22, 2015).

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of the Petition and do not require any limitation on the relief ABA has requested. Accordingly, there should be no obstacle to granting of the Petition.

If ABA can answer any questions or provide further information, please do not hesitate to contact the undersigned.

Respectfully submitted,

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